

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WP.No.26132 of 2011

Between :

Mrs. Lalitha Christian, Widow of Late Dr. Jaipal J. Christian,
Aged about : 74 years, Occ : Household and others

...Petitioners

and

The Government of Andhra Pradesh,
Represented by its Principal Secretary,
Revenue Department, Secretariat,
Hyderabad, and others.

...Respondents

Judgment pronounced on : 22-02-2017

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the judgments? : No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals? : Yes
3. Whether their Lordship wish to see the fair copy
of the Judgment? : No

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

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< **GIST:**

> **HEAD NOTE:**

!Counsel for petitioners : Sri D. Prakash Reddy, Senior Counsel
appearing for Sri P. Laxma Reddy.

^ Counsel for respondents : Sri B. Mahender Reddy, Special
Government Pleader for Revenue.

? **Cases referred**

1. 1988 (2) ALT 6
2. 2011 (1) ALD 103 [D.B.]
3. 1995 (6) SCC 213
4. 1999 (8) SCC 16
5. 2007 (6) ALD 348 (F.B.)
6. 2007 (8) SCC 254
7. AIR 1952 SC 16
8. 1978 (1) SCC 405
9. dt.11.04.2011 in W.A.No.1770 of 2001 [MANU/AP/0216/2011]
10. 2002 (5) ALD 532 (DB)
11. 2010 (6) ALD 207
12. 2009 (1) ALD 248

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WP.No.26132 of 2011

ORDER:

This Writ Petition has been filed challenging the orders dt.31.12.2010 of the 2nd respondent (the Joint Collector, Medak at Saga Reddy) in Case No.F3/7799/2006-F3/42/ROR/06 confirming the order dt.15.07.2006 in Case No.A3/1734/2006 of the 3rd respondent (The Revenue Divisional Officer, Sangareddy, Medak district), canceling the pattedar pass books of petitioners.

2. The petitioners are legal heirs of Dr.E.B. Christian *alias* Dr. Naidu.

3. It is not in dispute that a registered sale deed was executed in favour of Dr. Naidu on 7th Ahaban 1345 Fasli [7th September, 1935 A.D.] in respect of Acs.34.23 guntas in Survey No.326 and Acs.25.00 guntas in Survey No.310 situated at Khasba Akhali, now known as Zaheerabad.

4. Alleging that under a Will dt.09.03.1960 executed by the said Dr. Naidu, they inherited the property, the petitioners applied to the 4th respondent for issuance of pattedar pass book and title deed under the A.P. Rights in Land and Pattedar Passbooks Act,1971 (for short, 'the Act').

5. The then Tahsildar, Zaheerabad Mandal, Medak district (the 4th respondent) issued pattedar pass books and title deeds to petitioners in 2004 vide orders dt.15.10.2004 bearing Nos.262439 to 262441.

6. One year eight months later, the then Mandal Revenue Officer, Zaheerabad addressed a letter No.D/10260/05 on 12.06.2006 to the 3rd respondent that as per directions of the District Collector, Medak, he enquired the matter after assuming charge as Mandal Revenue Officer, Zaheerabad and found glaring mistakes committed by his predecessor; that petitioners played fraud upon the office of the Mandal Revenue Officer, produced forged documents, and without producing relevant records to show that they are connected or concerned with Dr. Naidu, obtained pattedar pass books and title deeds by misrepresentation; that this fraud was detected on 10.06.2006; and therefore, he was filing an appeal under the Act before the 3rd respondent under sub-Rule (2) of Rule 21 of the Rules framed under the Act to cancel the mutation affected in the name of petitioners; that the said report be treated as an appeal against the orders passed by the then Mandal Revenue Officer, Zaheerabad on 15.10.2004; and that the said Appeal is filed within time from the date of detection of fraud and mistake.

7. On receipt of this report from the 4th respondent, the 3rd respondent treated it as an appeal under Rule 21 (2) and issued notices to petitioners directing them to show on what basis they were claiming the properties in question when the lands were recorded in

the name of Dr. Naidu as pattedar and possessor in the Revenue Records.

8. Reply was filed to the said show-cause notice on 21.06.2006 by petitioners stating that Dr. Naidu was also called Dr. E.B. Christian and he had purchased the land from the Nizam Government in 1935 and was in possession since then. They questioned on what basis the Government was claiming the property when petitioners have become absolute owners and heirs and even by virtue of adverse possession. They relied on the Will dt.09.03.1960 executed by Dr. E.B. Christian alias Dr.Naidu bequeathing the property to them.

9. The counsel appearing for petitioners contended that the petitioners did not play any fraud on the office of the Mandal Revenue Officer, Zaheerabad to obtain the pattedar pass book and title deeds as alleged, and that there was no documentary evidence to show that the land belongs to the Government since the petitioners were in possession for a very long time. He stated that the then Mandal Revenue Officer, Zaheerabad after going through the records and scrutiny and verification issued the pattedar pass book and title deed to the petitioners and relied upon the Pahanies for the period 1960-61 to 2000-01, and sought dismissal of the appeal.

10. By order dt.15.07.2006, the 3rd respondent allowed the appeal, and set aside the orders passed by the Mandal Revenue Officer,

\Zaheerabad on 15.10.2004 as well as the Pattedar Pass Book and title deeds issued to petitioners by canceling them.

11. The 3rd respondent held that the *Vasool Baqui* and the *Sethwar* showed that the subject land was Government land; that the *Vasool Baqui* is a crucial document to know classification of land, title and ownership; that the petitioners had not produced any documents in support of their plea that the land was purchased in 1935 from the Nizam Government; and that though the *Khasra Pahani* for the year 1954-55 showed the name of Dr. Naidu, as per a decision of this Court reported in **S.A. Gyan Purshant Rao (died) and others v. Smt. Vijayamma**¹, entries in *Khasra Pahani* do not create any title and that petitioners failed to establish their title over the subject land by providing evidence. He held that petitioners failed to establish that Dr. Naidu and Dr. E.B. Christian are one and the same person; that probate of a Will is mandatory as per the decision of this Court in **S.A. Gyan Purshant Rao** (1 supra); and since the petitioners did not get the Will probated for more than 40 years before the competent authority, the Will had no legal sanctity. He therefore, concluded that the Will on which the petitioners placed reliance was an invented document and cannot be believed. He further held that the Mandal Revenue Officer, Zaheerabad, who granted pattedar pass book and title deed to petitioners in 2004 did not give any speaking order and did not mention as to how the petitioners are entitled to pattedar pass

¹ 1988 (2) ALT 6

books and title deeds over the land and that the said official should have insisted on a legal heir certificate issued by a Court of Law in support of claim of petitioners and he could not have relied upon a family member certificate issued by the Mandal Revenue Officer, Musheerabad, Hyderabad, showing that petitioners are family members of Late John Jaipal Christian, S/o.E.B. Christian, particularly when there was a dispute whether Dr.Naidu was also known as Dr. E.B. Christian, and that the said certificate itself stated that it was for the purpose of settlement of Bank accounts only and would not apply for claims to property.

12. Assailing the same, the petitioners preferred a Revision before the 2nd respondent invoking Section 9 of the Act. The 2nd respondent by order dt.31.12.2010 dismissed the Revision. He stated that 3rd respondent had elaborately discussed the merits and de-merits of the case and extracted the contents of the order of the 3rd respondent. He held that he did not find any merit in the Revision since there was no documentary evidence in support of the petitioners' contention contrary to the findings of the 3rd respondent.

13. Challenging the same, the present Writ Petition is filed.

14. On 19.09.2011, in WP.No.32245 of 2011, this Court directed *status quo* as on that day with regard to possession shall be maintained until further orders, and that the petitioners shall not alienate or create any third party interests or change the nature of the land.

15. WVMP.No.2088 of 2012 was filed by respondents to vacate the said order, but the said application was dismissed on 22.10.2013.

CONTENTIONS OF COUNSEL FOR PETITIONERS

16. Sri D. Prakash Reddy, Senior Counsel appearing for Sri P. Laxma Reddy, counsel for petitioners, contended that:

(i) the Mandal Revenue Officer, Zaheerabad (the 4th respondent) who is himself a statutory authority could not have maintained any appeal against his predecessor's decision rendered on 15.10.2004 before the 3rd respondent in view of the Division Bench judgment of this Court in **Joint Collector, Ranga Reddy District, Hyderabad and others v. P.V. Narasimha Rao and others**²;

(ii) it was not open to the respondent nos.3 and 4 to go into the validity of the Will on the basis of which the petitioners had obtained pattadar pass books and title deeds on 15.10.2004, since powers of a Civil Court were not conferred on respondent nos.3 and 4;

(iii) that allegation of forgery was the basis of the report dt.12.06.2006 made by 4th respondent to 3rd respondent which triggered action against petitioners, but neither the 3rd respondent nor the 4th respondent could establish that the Will produced by petitioners was a forged one;

² 2011 (1) ALD 103 [D.B.]

(iv) that, in any event, the title of the Government to the property could not have been gone into by respondent nos.2 to 4 since the basis of such a plea was not made anywhere in the impugned orders;

(v) that since no third party had questioned the mutation in the name of petitioners or issuance of pattedar pass books and title deeds to them, the respondent nos.2 to 4 had no jurisdiction to state that the subject land was Government land;

(vi) that there was an amendment to Section 213 of the Indian Succession Act, 1925 and sub-Section (2) thereof categorically stated that sub-Section (1){which required a probate to be obtained in regard to a Will} was not to apply to Indian Christians; that this amendment was made in the year 2002 by the Indian Succession (Amendment) Act, 2002; and therefore, the 3rd respondent fell in error in holding that a probate for a Will was mandatory. According to him, in view of this amendment to Section 213, the judgment in **S.A. Gyan Purshant Rao** (1 supra) would not apply;

(vii) that the appeal under sub-Rule (2) of Rule 21, even if it could be entertained, ought to have been filed within a period of (60) days from the date, i.e., 15.10.2004 when the then Mandal Revenue Officer mutated the names of petitioners and granted pattedar pass books and title deeds to them; and without there being even an application for condonation of delay of one year eight months, the 3rd respondent

entertained the report of the 4th respondent as an appeal and passed his orders, which therefore cannot be sustained; and

(viii) that proceedings under the Act are summary in nature and questions of title cannot be decided in proceedings under the said Act, and if the respondents feel that the above land is Government land they must approach the competent Court of Law for declaration of the title of the Government and recover possession thereof from the petitioners.

CONTENTIONS OF SPECIAL GOVERNMENT PLEADER FOR RESPONDENTS

17. Sri B. Mahender Reddy, Special Government Pleader, appearing for respondents, however refuted the above contentions.

18. He contended that :

(i) though the lands originally belong to Dr. Naidu as per Revenue Record, on his death *intestate* they would automatically vest in the State under the Andhra Pradesh Escheats and Bona Vacantia Act, 1974, and therefore, the respondent nos.3 and 4 were entitled to hold that in the absence of the Will, the land of Dr. Naidu vested in the Government and it had title to it;

(ii) the Will produced by petitioners was not proved by examining an attesting witness as required under Section 68 of the Evidence Act, 1872 and Section 63(c) of Indian Succession Act, 1925, and placed

reliance on **Kashibai W/o Lachiram and another v. Parwatibai W/o. Lachiram and others**³ in support of the said proposition;

(iii) setting aside the order of 4th respondent and the 3rd respondent would result in the revival of the illegal order dt.15.10.2004 of the then Mandal Revenue Officer, Zaheerabad, and in such circumstances, this Court should refrain from granting any relief to petitioner as held in **Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar and others**⁴;

(iv) before the then Mandal Revenue Officer, Zaheerabad issued pattedar pass books and title deeds to petitioners, notice ought to have been issued to the State Government also as required by sub-Section (3) of Section 5 of the Act read with Rules 19 & 5 (2) of the Rules, and this also vitiated the proceedings dt.15.10.2004 of the then Mandal Revenue Officer, Zaheerabad. He relied in this regard on the judgment in **Chinnam Pandurangam v. Mandal Revenue Officer, Serilingampally Mandal, Ranga Reddy District and others**⁵.

REPLY SUBMISSIONS OF COUNSEL FOR PETITIONERS

19. Sri D. Prakash Reddy, appearing for petitioners, in his reply submissions, contended that the contention of the Special Government Pleader that there is automatic vesting of the property of the deceased Dr. Naidu in the Government under the proceedings of the Andhra Pradesh Escheats and Bona Vacantia Act, 1974 is without any basis.

³ 1995 (6) SCC 213

⁴ 1999 (8) SCC 16

⁵ 2007 (6) ALD 348 (F.B.)

He contended that in view of Section 7 and 8 of the said Act there has to be an enquiry relating to the property being escheat; that after such enquiry, the local officer should be satisfied about it being escheat property and that it was in possession of a person who had no authority to claim it, and if any person resists to surrender such possession on demand, after obtaining sanction of competent authority, the local officer should file a suit in a Court for declaration of the Government's right to the property and for recovery of possession; and only after the Court granted such declaration, the property would escheat to the Government.

20. He also placed reliance on a proceeding in File No.A1/1451/50 dt.04.06.1950 issued by the Special Inspector for Enquiry, Ownership Rights, Zaheerabad Taluqa, Zaheerabad (V), Medak District wherein a finding was recorded by the said Officer that Dr. E.B. Christian was originally a Hindu with the name Dr.Venkata Krishnama Naidu; that he converted himself into Christianity and was thereafter known as Dr.E.B. Christian though the villages still called him as Dr. Naidu. In those proceedings, the counsel contended that the subject land was found to be the private land of Dr. E.B. Christian and patta was confirmed in his favour.

21. From the contentions raised by the parties, the following issues arise for consideration :

- (a) *Whether the 4th respondent's report should have been entertained as an appeal by the 3rd respondent even*

though it was filed one year eight months after the order dt.10.08.2014 was passed by the predecessor of the 4th respondent ?

- (b) Whether the land in questioned escheated to the Government under the provisions of the Andhra Pradesh Escheats and Bona Vacantia Act, 1974?*
- (c) Whether the Will executed by a Christian required a probate ? and*
- (d) To what relief ?*

Point (a) :

22. The admitted facts show that the predecessor of the 4th respondent on 15.10.2004, on the basis of a Will dt.09.03.1960 executed by Dr. E.B. Christian, mutated the names of the petitioners in the Revenue Record and issued pattedar pass books and title deeds to them.

23. Under sub-Section (3) of Section 5 of the Pattedar Pass Books Act, 1971, the 4th respondent was competent to do so. This is not disputed by the Special Government Pleader.

24. The 4th respondent who was the successor to his predecessor is a statutory authority under the Act. He had given a report dt.12.06.2006 to the 3rd respondent alleging that forged documents were produced by petitioners, fraud was played upon his predecessor and without producing records to show that petitioners are connected

with Dr. Naidu, the petitioners obtained pattedar pass books and title deeds by way of misrepresentation, and he detected the fraud on 10.06.2006.

25. It is pertinent to note that no third party had questioned the mutation made in favour of petitioners on 15.10.2004 by the predecessor of the 4th respondent.

26. Also, it was not the case of 4th respondent that the land is Government land, or that the land had escheated to the Government under the provisions of the Andhra Pradesh Escheats and Bona Vacantia Act, 1974. (This plea is raised in the arguments for the first time by the Special government Pleader without any pleading in the counter-affidavit.)

27. The question is whether the 4th respondent, being a statutory authority, whose predecessor had granted mutation to petitioners on 15.10.2004, could himself file a report to 3rd respondent and ask him to treat it as an appeal under Rule 21(2) of the Rules framed under the Act. In fact, the 4th respondent was assailing the orders dt.15.10.2004 passed by his predecessor, who, in the capacity of a statutory authority, had passed the order dt.15.10.2004.

28. A Division Bench of this Court in **P.V. Narasimha Rao and others** (2 supra) held that authorities under a statute are not entitled to challenge orders passed under the Act and only the State, when its rights are affected, can file an appeal or challenge the orders of

authorities passed under the Act. This view was taken by the Division Bench relying on the judgment of a Division Bench in **Mohtesham Mohd. Ismail v. Enforcement Directorate**⁶, wherein the Supreme Court, after considering the provisions of Section 54 of the Foreign Exchange Regulation Act, 1973, held as under:

“ 16. An adjudicating authority exercises a quasi-judicial power and discharges judicial functions. When its order had been set aside by the Board, ordinarily in absence of any power to prefer an appeal, it could not do so. The reasonings of the High Court that he had general power, in our opinion, is fallacious. For the purpose of exercising the functions of the Central Government, the officer concerned must be specifically authorised. Only when an officer is so specifically authorised, he can act on behalf of the Central Government and not otherwise. Only because an officer has been appointed for the purpose of acting in terms of the provisions of the Act, the same would not by itself entitle an officer to discharge all or any of the functions of the Central Government. Even ordinarily a quasi-judicial authority cannot prefer an appeal being aggrieved by and dissatisfied with the judgment of the appellate authority whereby and whereunder its judgment has been set aside. An adjudicating authority, although an officer of the Central Government, should act as an impartial tribunal. An adjudicating authority, therefore, in absence of any power conferred upon it in this behalf by the Central Government, could not prefer any appeal against the order passed by the Appellate Board.”(emphasis supplied)

29. The above reasoning equally applies to the present case where the 4th respondent, dissatisfied by his predecessor's grant of pattadar passbooks and title deeds to petitioners, filed the appeal before the 3rd respondent.

⁶ 2007 (8) SCC 254

30. In the present case, it is not the case of respondents that the 4th respondent was empowered by the State to file an appeal before the 3rd respondent. No such authority from the State or its representative, the District Collector, is referred to anywhere in the impugned proceedings of either the 3rd respondent or the 4th respondent.

31. Therefore, the principle in the above case that authorities under the statute cannot take up the case of the State and that a *quasi* judicial authority, who decides a dispute on merits and passes the orders, cannot be said to be an aggrieved party by its own orders, would be attracted.

32. Therefore, I hold that the 4th respondent could not have filed any appeal in his personal capacity or any official capacity before the 3rd respondent challenging the orders of his predecessor. Consequently, the 3rd respondent could not have treated it as an appeal or could not have exercised any jurisdiction under the Act to set aside the orders dt.15.10.2004 of the then Mandal Revenue Officer, Zaheerabad, and the action of the 3rd respondent is therefore wholly without jurisdiction.

33. The Government Pleader however contended that since the order of the 3rd respondent has been confirmed by the 2nd respondent, the 2nd respondent's order ought to be treated as an order passed in exercise of *Suo motu* Revision under Section 9 of the Act against the order dt.15.10.2004 of the Mandal Revenue Officer, Zaheerabad and

the said order cannot be interfered with. This is equally without merit for the reason that the 2nd respondent admittedly was approached by the petitioners by filing a Revision under Section 9 of the Act. Therefore, the 2nd respondent cannot be said to have exercised any *Suo motu* revisional power in the facts and circumstances of the case. That apart, once the order of the 3rd respondent is held to be wholly without jurisdiction, the order of the 2nd respondent confirming the same has to be held to be erroneous and set aside.

34. The contention of the Government Pleader that the order dt.15.10.2004 of the 4th respondent is contrary to law, and that the said order would revive if the orders of respondent nos.2 and 3 are set aside, and this cannot be permitted in view of the decision in **Maharaja Chintamani Saran Nath Shahdeo** (4 supra), is also without any merit.

35. In the decision in **Maharaja Chintamani Saran Nath Shahdeo** (4 supra), the Supreme Court held if setting aside an order on the ground of lack of jurisdiction would result in the revival of an illegal order, the order lacking jurisdiction should not be set aside. The said principle has no application to the present case.

36. As would be explained below, the order dt.15.10.2004 of the then Mandal Revenue Officer, Zaheerabad cannot be said to be contrary to law.

37. The further contention of the learned Government Pleader that notice should have been given by his predecessor before passing of the order dt.15.10.2004 to the State Government, and that this is mandated by sub-Section (3) of Section 5 read with Rules 19 and sub-Rule (2) of Rule 5, and that such procedure has been held to be necessary in **Chinnam Pandurangam** (5 supra), is also without any merit.

38. The orders passed by respondent nos.2 and 3 cannot be sustained by the learned Government Pleader by giving new reasons, that too, raised for the first time in the arguments.

39. In **Commissioner of Police v. Gordhandas Bhanji**⁷, the Supreme Court held that public orders, publicly made, in exercise of statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. They have to be construed objectively with reference to the language used in the order itself.

40. In **Mohinder Singh Gill v. Chief Election Commr**⁸, the Supreme Court reiterated:

“ 8. when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get

⁷ AIR 1952 SC 16

⁸ 1978 (1) SCC 405

validated by additional grounds later brought out. ... Orders are not like old wine becoming better as they grow older.”

41. In the present case, no third party had approached the 4th respondent complaining that he was deprived of an opportunity to contest the amendment to the Record of Rights sought for by petitioners. Even the then Mandal Revenue Officer, Zaheerabad entertained no doubt about the right of petitioners to be substituted in the place of Dr. Naidu.

42. It is not in dispute that the *Khasra Pahani* for the year 1954-55 showed the name of Dr. Naidu.

43. In **Joint Collector, R.D.O., Chevella, v. Syed Ahmed Hasan and others**⁹, a Division bench of this Court held that *Khasra Pahani* is a Record of Right and entries therein shall be presumed to be correct unless the contrary is shown. It held that the *Khasra Pahani* once prepared, is a Record of title and the same cannot be altered without there being any proceedings issued by the competent authority for the correction.

44. Similar view has been taken in **Union of India v. Vasavi Co-operative Housing Society Ltd.**¹⁰ that *Khasra Pahani* of 1954-55 was prepared as per the Record of Rights, regulations and the entries therein have the force of title by itself.

⁹ dt.11.04.2011 in W.A.No.1770 of 2001 [MANU/AP/0216/2011]

¹⁰ 2002 (5) ALD 532 (DB)

45. This decision was followed in **The Executive Officer, Sri Bramaramba Mallikarjuna Swamy Temple v. Sai Krupa Homes rep. by Managing Partner, Sri Garavandulla Sambaiah S/o Lakshmaiah and Ors**¹¹.

46. So it cannot also be said that on 15.10.2004, when the then Mandal Revenue Officer, Zaheerabad issued pattedar pass books and title deeds to the petitioners, he should have issued a notice to the State Government anticipating the claim by the State Government for title to the land.

47. Moreover, in **Sri Thripuravaram Krishna Reddy vs. The Joint Collector and three Ors**.¹², it was held that Revenue Divisional Officer, being the appellate authority, is not empowered to exercise his appellate jurisdiction unless a proper appeal in the prescribed form with affixture of prescribed stamp is filed within the limitation period.

48. In the present case the 4th respondent sent a report to the 3rd respondent (Revenue Divisional Officer) and asked the latter to treat it as an appeal, is thus a procedure unknown to law.

49. It is nobody's case that the 3rd respondent had any powers of *Suo moto* revision like the 2nd respondent.

50. Therefore, on all these counts it has to be held that the very filing of appeal by the 4th respondent before the 3rd respondent and its entertainment by the 3rd respondent is wholly without jurisdiction and

¹¹ 2010 (6) ALD 207

¹² 2009 (1) ALD 248

so his orders are null and void, and the order of the 2nd respondent confirming the same, is equally null and void.

51. Therefore, Point (a) is answered in favour of petitioners and against the respondents.

Point (b) :

52. It is important to note that the contention that the subject land had escheated to the Government on the death of Dr.Naidu, was not the ground mentioned in the report dt.12.06.2006 sent by 4th respondent to the 3rd respondent.

53. This was also not the basis for the order of the 3rd respondent or the order of the 2nd respondent.

54. This contention was raised for the first time before this Court by the Special Government Pleader to sustain the orders of the 3rd respondent and 2nd respondent. In fact, no such plea was taken in the counter-affidavit filed by the respondents. Therefore, I am firstly of the opinion that the respondents cannot raise such a contention in this Writ Petition in view of decisions in **Commr. Of Police** (7 supra) and **Mohinder Singh Gill** (8 supra). Even otherwise, the said contention has no merit.

55. As per the Andhra Pradesh Escheats and Bona Vacantia Act, 1974, the term '*escheat*' is defined in Section 2 (ii) as any property the owner of which dies *intestate*, and without leaving a legal heir. The

term '*bona vacantia*' is defined in Section 2(i) as including any property, situated in the State of which there is no rightful owner.

56. Though Section 3 of the Act states that a property situated in a State, which is vested in the State by escheat or lapse or as bona vacantia for want of rightful owner shall belong to the Government, the statute requires an enquiry under Section 7 by a local officer on receipt of information from any source that any property situated or lying within his jurisdiction is of the nature of an escheat or a bona vacantia.

57. It further mandates that if he came to a conclusion that property is of the nature of an escheat or bona vacantia, but it is in possession of a person who has no authority to claim it and if such person resists to surrender such possession on demand, under Section 8 of the said Act, he should obtain the sanction of a competent authority and institute a suit in a Court for declaration of the Government's right to the property and for recovery of possession of such property. Only after the Court declares that the property is an escheat or bona vacantia, the local officer can obtain possession thereof through the Court and manage it or dispose it of [Sub-Section (2) of Section 8].

58. In the present case, there has neither been an enquiry by the 4th respondent that the land is escheat nor is there an attempt by him to dispossess the petitioners before passing of the impugned order nor

has any suit been filed to declare that it is Government's property and to recover its possession.

59. On a presumption that the land is escheated to the Government, a person cannot be dispossessed firstly and then forced to establish his title in a Court of Law. It is for the State to recover possession by following the procedure prescribed in the Act from the person in possession of it. Therefore, the contention of the Special Government Pleader that the Government is the owner of the land because it escheated to the Government is without merit, since there is no declaration from any Court under sub-Section (1) of Section 8 of the Andhra Pradesh Escheats and Bona Vacantia Act, 1974 to that effect, nor has possession of the said land been delivered to the respondents by a Civil Court.

60. Point (b) is answered accordingly against the respondents.

Point (c) :

61. The basis of the order of the 3rd respondent is that a Will executed by an Indian Christian (Dr.Naidu) required a probate and the decision in **S.A. Gyan Purshant Rao** (1 supra) is relied upon for the said proposition. That decision was rendered after considering the provisions of Section 57 and Section 213(2) of the Indian Succession Act, 1925. This Court held that the Act requires a probate to be obtained in respect of Wills executed by Indian Christians.

62. But after this decision was rendered, there was an amendment to sub-Section (2) of Section 213 by the Indian Succession (Amendment) Act, 2002. The effect of the amendment is that sub-Section (1) of Section 213, which makes a probate necessary, was held by sub-Section (2) not to apply in the case of Wills of Indian Christians also, which was not there earlier. Therefore, it cannot be said that in 2004 when the predecessor of 4th respondent accepted the validity of the Will executed by Dr.Naidu, a probate was necessary. Therefore, the contention of the Special Government Pleader that the Will produced by petitioners was required to be probated under the provisions of the Indian Succession Act, 1925, is equally without merit.

63. This point is answered accordingly against the respondents and in favor of the petitioners.

Point (d):

64. As stated above, the petitioners had produced a true copy of File No.A1/1451/50 dt.04.06.1950 of the then Special Inspector for Enquiry, Ownership Rights, Zaheerabad Taluq, Medak District in support of the plea that Dr. Naidu, whose name was entered in the *Khasra Pahani* for 1954-55, had converted as a Christian with the name E.B. Christian.

65. Though on 15.06.2016, this Court directed the Office of the Advocate General to produce the record if any, in relation to the said

report, subsequent thereto no record is produced to doubt the said document. However, I am not expressing any final opinion on this issue in view of my findings on Points (a) to (c) referred to above since it is unnecessary to express any opinion thereon.

66. Accordingly, the Writ Petition is allowed; and the order dt.15.07.2016 of the 3rd respondent as confirmed by the order dt.31.12.2010 of the 2nd respondent are both set aside as wholly without jurisdiction; and the pattadar pass books and title deeds issued to petitioners by the predecessor of the 4th respondent are declared as valid.

67. However, this will not preclude the 1st respondent from suing in an appropriate Court for declaration of its title and recovery of possession of the land from the petitioners, if it is so advised.

68. The 1st respondent shall also pay costs of Rs.5,000/- to the petitioners.

69. As a sequel miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-02-2017

Note : LR Copy to be marked : YES

B/o.

Ndr/*